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SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1563

THE BOEING COMPANY,
Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD,
- and -
BOOSTER LODGE NO. 405,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF BOEING COMPANY, IN REPLY TO OPPOSITION

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The question presented by Petitioner is, "Whether a union committed an unfair labor practice under Section 8(b) (1) (A) of the National Labor Relations Act and engaged in conduct to 'restrain or coerce' employees in the exercise of their rights under Section 7 of the Act to 'refrain from concerted activities,' where such union imposed fines on, and attempted to collect such fines from, employees who came through the union's picket line, regardless of whether or not such employees had resigned their union membership and

regardless of whether or not the fines related to the period before, or the period after, resignation."

In its petition, The Boeing Company argues that there are compelling reasons for re-examination and clarification of the court's prior ruling with respect to union fines of members who return to work during a strike (*N.L.R.B. v. Allis-Chambers Manufacturing Company*, 388 U.S. 175 (1967)).[1]

1. In its memorandum, Respondent National Labor Relations Board asserts that this Court reaffirmed the rationale of *Allis-Chalmers* in *Scofield v. National Labor Relations Board*, 394 U.S. 423 (1969). However, in *Scofield* the Court was not requested to reconsider the majority decision in *Allis-Chalmers*.

Moreover, the Board itself, in its Decision and Order, noted: "The holding in *Allis-Chalmers* was carefully restricted to the facts of that case".[2] Even should the Court decline to re-examine its prior ruling (i.e., *Allis-Chalmers*), the Court should clarify its ruling and determine the applicability of the ruling to the facts of the instant case.

2. Respondent Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, has filed a brief in opposition to the petition of The Boeing Company, in which that Respondent asserts that the question presented by Petitioner is not within the scope of the complaint which the National Labor Relations Board's General Counsel issued and prosecuted, and that courts are not empowered to de-

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[1]Petition, page 8.
[2]Petition, page 40a

cide an issue "which the complaint does not tender" (Booster Lodge No. 405 brief, pp. 2-3). Respondent Booster Lodge No. 405's assertion ignores the fact that the Complaint alleged that the Union levied fines against named employees and other employees of The Boeing Company in the sum of $450 each for crossing the union's picket line and working during a union strike against The Boeing Company from September 16, 1965 to October 4, 1965. The Complaint alleged that the fines "were *unreasonable, excessive,* and *discriminatory*", in violation of Section 8(b) (1) (A) of the Act.[3] The Board did not find that the fines levied against members were "unreasonable, excessive, or discriminatory". Therefore, The Boeing Company, who was the Charging Party before the Board, is an aggrieved party within the meaning of Section 10(f) of the Act,[4] and the question presented herein by the Petitioner is properly before the Court.

Moreover, this Court's majority ruling in *Allis-Chalmers* was the basis upon which the Complaint was issued and the allegations were made by the General Counsel. Clearly it was the rationale of the majority opinion in *Allis-Chalmers* which prompted the above-mentioned allegations and formed the basis for the entire Complaint and the Board's Decision and Order. (See, e.g., Petition, pages 62a-86a). Moreover, the instant case involves a situation where the Union's position was that its members could *not* resign at any time.

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[3]Petition, page 48a. (Emphasis supplied).
[4]29 U.S.C. Section 160 (f.).

Inasmuch as the Complaint in the instant case alleged that *all* of the fines were violative of the Act — both as to those members who did resign and those who did not — Respondent Union's opposition is without merit.

Accordingly, the petition of The Boeing Company should be granted.

Respectfully submitted,

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